G-012/DI-90-227 APPROVING OWNERSHIP AND CAPACITY LEASE AGREEMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of the Joint Venture Between Rahr Malting and Western Gas Utilities to Construct a Seven-Mile Gas Pipeline in Scott County, Minnesota

ISSUE DATE: August 6, 1990

DOCKET NO. G-012/DI-90-227

ORDER APPROVING OWNERSHIP AND CAPACITY LEASE AGREEMENTS AND REQUIRING FILINGS

PROCEDURAL HISTORY

On June 8, 1990, the Commission received a letter from the Minnesota Department of Public Service (the Department) requesting that the Commission assert jurisdiction over the pipeline proposed in this matter. The Department also requested that the Commission solicit comments from all interested parties regarding the unique legal and policy issues it raises.

On June 28, 1990, the Commission issued an Order asserting jurisdiction over the proposed pipeline project pursuant to Minn. Stat. §§ 216B.02, subd. 4 and 216B.08. In addition, the Commission asked the parties to comment about issues relating to the construction and operation of this pipeline and issues relating to the public interest of gas utilities competing among themselves in the same area for the same customers. ORDER ASSERTING JURISDICTION AND ESTABLISHING COMMENT PERIOD
(June 28, 1990).

On July 12, 1990, Peoples Natural Gas Company (Peoples) filed comments regarding the construction and operation of the proposed pipeline.

On July 13, 1990, Western Gas Utilities, Inc. (Western), Rahr Malting Company (Rahr), Minnegasco, Inc. (Minnegasco), Northern States Power Company Gas Utility (NSP Gas), the Minnesota Department of Public Service (the Department), and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments with the Commission regarding the proposed pipeline.

On July 17, 1990, Midwest Gas Company (Midwest) filed comments regarding the proposed pipeline.

On July 18, 1990, Western, Rahr, Minnegasco, the Department and the OAG filed reply comments.

On July 26, 1990, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

In its June 28, 1990 Order in this matter, the Commission commenced examination of two subjects: first, the proposed Rahr-Western pipeline; and second, competition between gas utilities in the same area for the same customers. The instant Order shall address the issues specifically related to the first subject, the proposed Western-Rahr pipeline. In a separate docket, the Commission will consider the second more general subject: competition between gas utilities. [1]

Commission Jurisdiction Over the Proposed Pipeline

The pipeline is a joint venture between a private business corporation and a regulated public utility. Rahr Malting Company, a private business corporation, and Western Gas Utilities, Inc., a regulated public utility, propose a seven mile pipeline between the interstate carrier Northern Natural Gas Company and Rahr's barley malt production facility in Shakopee. Western would construct the pipeline with funding from Rahr which would actually own the pipeline. Thereafter, Western would operate and maintain the pipeline, lease part of the pipeline's capacity from Rahr on a long term basis and install off-taps and branch pipelines to serve customers along the pipeline.

In its June 28, 1990 Order, the Commission asserted jurisdiction over this matter, finding that Western's functions under this proposal, operating the pipeline, providing transportation services to Rahr, and serving its own customers through taps or branch lines, are those of a public utility as defined in Minn. Stat. § 216B.02, subd. 4. The Commission reaffirms its jurisdiction over the proposed pipeline.

Minn. Stat. § 216B.01 states the goals of Commission regulation:

> . . .to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers.

The Legislature has given the Commission broad authority over utilities to achieve regulatory goals specified in Minn. Stat § 216B.01. The Commission has the authority to establish terms and conditions of service, standards for service, and accounting procedures for utilities. Western must furnish reasonably adequate service at rates and charges in accordance with tariffs and schedules filed with the Commission.

In evaluating this proposal under Minn. Stat. § 216B.01, the Commission must consider the impact of this proposal on Western's and Minnegasco's retail customers. If the Commission were to decide that Western's role in this proposal contravened the public interest concerns stated in Minn. Stat. § 216B.01, the Commission could prohibit Western from participating in this project.

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[1] In the Matter of an Inquiry into Competition Between Gas Utilities in Minnesota, Docket No. G-999/CI-90-563.

Proposed Pipeline and the Public Interest

Rahr and Western argue that the prospective benefits of the proposed pipeline are substantial. Rahr will realize a lower cost and a reliable, firm alternative supply of natural gas which will allow it to compete more effectively in the short and long run. Western will receive the benefit of the use of a gas pipeline built at the expense and risk of private capital. Western's new customers along the pipeline would benefit in the receipt of natural gas service that was previously unavailable to them. In fact, according to Rahr, Minnegasco may benefit from the pipeline; the proposed reduced use of Minnegasco by Rahr may appear very advantageous compared to the situation that would exist if Rahr were forced out of business, out of state or precluded from ever expanding its Shakopee facility. In short, according to the petitioners, the pipeline proposal is advantageous for all and detrimental to none, a claim that is given added credibility by Minnegasco's acknowledgement that loss of Rahr as a customer will not materially affect its rates.

While the specific fruits of the pipeline have yet to be realized, the Commission is persuaded that the public interest will be served by permitting this proposal as modified to go forward. In addition to the neutral impact of the proposal on Minnegasco's customers, the Department has submitted an analysis, qualified by a number of assumptions, suggesting that projected sales off the pipeline will add more to revenues than to costs by approximately 70 cents per Mcf. While the results are admittedly sensitive to changes in assumptions, the assumptions appear reasonable. This analysis supports the conclusion that the proposed pipeline will be profitable for Western and have no negative impact upon Western's current customers.

Commission concerns have centered on Western's ability to provide "adequate and reliable service at reasonable rates" to its retail consumers, a key standard articulated in Minn. Stat. § 216B.01. The Commission's concerns and corresponding required modifications to the proposal are as follows:

a. Contracts Between Rahr and Western

1. Ownership Agreement and the Capacity Lease Agreement

There are a number of provisions in Western's contracts with Rahr which increase the long-term reliability of Western's service, thereby enhancing the security of Western's customers. First, beyond the year 2000 termination date, Rahr must provide Western with a one-year notice if it decides to terminate the Capacity Lease Agreement. Second, if Rahr decides to terminate the Agreement, Western owns the right-of-way for the pipeline and has the option of constructing a parallel pipeline and would still be entitled to enough gas off Northern's tap to the pipeline to meet the requirements of its retail customers. Third, while the Ownership Agrement does not specify a purchase price, Western does have the right of first refusal if Rahr decides to sell the pipeline. Fourth, because it is a public utility, Western's operation of the pipeline will be subject to Commission's prudency reviews in the event that Western's negligence results in reliability problems for its customers.

However, the Agreements can and should be improved in one area. As originally submitted, the "Assignment" sections of the Ownership Agreement and the Capacity Lease Agreement raised concerns for the reliability and consistency of the gas service provided through this pipeline. For example, the originally submitted contracts failed to state that Rahr must have reasonable grounds for exercising its rights to void the contracts in the event of a change in control of Western. Also, the contracts did not provide that neither Rahr nor Western shall unreasonably withhold consent to any assignment. Curative amendments to these contracts have been proposed which reduce these concerns and the Commission will approve the modified Ownership Agreement and the Capacity Lease Agreement and require Western to file signed contracts as modified.

Commission approval of the Capacity Lease Agreement does not mean, of course, that the Commission will automatically allow Western to pass on to ratepayers any capacity charges negotiated under the Agreement, or the costs of any parallel pipeline Western might install at some later date. Recovery of such costs will be subject to demonstration of prudence in a subsequent rate case.

2. The Operation and Maintenance Agreement

The Operation and Maintenance Agreement sets forth the basis for remuneration of Western by Rahr. Minn. Stat. § 216B.05, subd. 2 requires gas utilities to file not only tariffs, but also their rates, tolls, and charges established for any service performed by them within the state. The services Western provides under the agreement are unique to its relationship with Rahr. Western will provide separate operation and maintenance services only because it does not own the pipeline. The costs that Western incurs operating and maintaining its own facility are recovered through retail rates. Developing a standard tariff for services that will probably never be replicated is unnecessary. However, the charges outlined in the Agreement fit the statutory language. The Commission, therefore, will require

Western to file the Operation and Maintenance Agreement as a rate schedule pursuant to Minn. Stat. § 216B.05, subd. 2.

3. Future Contract Amendments

Commission approval of the pipeline project is based in substantial part on the three contracts (Ownership Agreement, Capacity Lease Agreement, and Operation and Maintenance Agreement) as modified herein. Any future amendments which the parties may wish to make to these contracts must receive prior Commission approval. Accordingly, the Commission will require Western to file any proposed amendments to these contracts with the Commission and receive Commission approval for the proposed amendments prior to implementing them.

b. Contracts for Adequate Firm Gas Supplies

In its Capacity Lease Agreement with Rahr, Western has contracted for sufficient capacity on the new pipeline at least until the year 2000. However, Western has not contracted for adequate firm gas supplies and firm transportation to the new pipeline. Therefore, the Commission will require Western to petition by September 1 for any changes in its demand volumes from Northern Natural resulting from the expansion. In this filing, Western will document its need for additional firm capacity, estimate its cost, and demonstrate that it has made the necessary arrangements with Northern. Likewise, if Western opts for Northern's transportation service, its filing will also demonstrate that it has obtained access to sufficient firm gas supplies. The Commission will require Western to make this filing whether or not its contracts with Northern have changed.

Conclusion

The Commission finds that the pipeline proposal, as modified, serves the public interest. The Commission will consider this matter further in the course of its review of the compliance filings ordered herein.

ORDER

1. The Ownership Agreement and Capacity Lease Agreement between Western Gas Utilities, Inc. (Western) and Rahr Malting Company (Rahr), as modified herein, are approved and the construction of the pipeline is authorized, subject to the conditions appearing in the following ordering paragraphs.

2. Within 15 days of the date of this Order, Western Gas Utilities, Inc. (Western) shall file with the Commission the Ownership Agreement and Capacity Lease Agreement, executed and modified as indicated above.

3. Within 15 days of the date of this Order, Western shall file the Operation and Maintenance Agreement with the Commission.

4. Prior to implementing any amendment to the Ownership Agreement, Capacity Lease Agreement, or Operation and Maintenance Agreement as approved herein, Western shall submit the proposed amendment to the Commission and obtain Commission approval therefor.

5. On or before September 1, 1990, Western shall petition the Commission for any increases in its demand volumes from Northern Natural Gas Company (Northern) resulting from the pipeline project and shall file its contracts for firm gas supplies and transportation arrangements and a report which documents the extent of its need for additional firm capacity, estimates its cost, and demonstrates that it has made the necessary arrangements with Northern. If Western opts for Northern's transportation service, its report shall demonstrate that it has obtained access to sufficient firm gas supplies. Western shall make this filing whether or not its contracts with Northern have changed. If Western believes that its present contracts with Northern guarantee an adequate supply of natural gas for its existing and future customers, it shall detail the basis for its belief in its report.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)